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fully address and resolve every issue surrounding the joint filing by five of MCAC's members dated May 7 and the May 21 request by BA.

I.**Summary of Background**

In its Order No. 72708 dated June 24, 1996 at page 6, the Commission affirmed the continuation of the activities of the Maryland LNP Consortium ("Consortium"), including the pursuit of the goals of issuance of an RFP and an LNP implementation date of third quarter 1997 for Maryland's two largest LATAs. The Commission further acknowledged the "governance and organization" of MCAC as the device to be utilized to "further these [Consortium] goals." Within the framework of Case No. 8704, for the past 11 months MCAC has proceeded to implement extensive efforts necessary to comply with the Commission's implementation date by selecting and contracting with a vendor for the provision of LNP database services. Since such a vendor is expected to derive tens of millions of dollars in compensation for its sophisticated and intricate services, the governance and organization of MCAC, under the auspices of the Consortium and Case No. 8704, implemented an appropriate and necessary risk management strategy to which its membership of competing carriers could agree.

Also within the framework of Case No. 8704, the Consortium established the regime of contractual relationships necessary to implement LNP in Maryland. This regime is: (1) a Master Contract is to be negotiated between MCAC (comprised of member carriers) and the vendor providing LNP database services, and (2) a standard User Agreement is to be executed between the vendor and each entity, including any MCAC member, electing to use the vendor's services ("User"). In effect, the Master Contract serves to put in place the vendor under certain pricing, performance and accountability provisions, while the standard User Agreement is both an order form that incorporates the Master Contract's pricing terms and a requirements document that authorizes a carrier or other entity to use the services of the vendor.

That the Master Contract would be negotiated by a single entity such as MCAC was the result of substantial investigation and discussion by the Consortium. The overwhelming consensus of the Consortium was that it would be impractical and wholly unworkable for multiple carriers, many of whom are competitors, to enter into a Master Contract with an LNP database services vendor as individual parties to that Master Contract. Differing viewpoints among carriers would be likely to create insurmountable obstacles to Master Contract negotiations. Moreover, it would be unlikely that any vendor could come to terms, within the Commission's established implementation schedule, with such a disparate and potentially non-unified front of carriers.

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Significantly, the entire Master Contract and standard User Agreement regime has been extensively discussed within the Consortium and agreed upon as early as April 1996.² This regime was decided with BA's participation and acquiescence under the auspices of the Consortium, reported to the Commission in Staff's Second Quarterly Report (p. 12 and Exh. 6), and implemented by MCAC upon its June 1996 formation. BA has raised no objection or complaint regarding this regime for the 13 months the regime has been in place, but 40 days before the commencement of the 3rd quarter of 1997, BA now raises its first concern.

BA's eleven-hour concerns also emerge just days before the expected completion of Master Contract negotiations. Following its five-month vendor evaluation efforts during August through December 1996, MCAC initiated Master Contract negotiations with its selected vendor, Lockheed Martin DMS, in January 1997. Through protracted and complex negotiations, MCAC has undertaken extraordinary efforts to achieve the best possible price for the highest quality database services. Those negotiations have resolved hundreds of issues and now are more than 95 percent complete, with the final elements of less than five issues remaining to be resolved. Both the Consortium and MCAC have informed BA of the schedule of Master Contract negotiations repeatedly during 1996 and 1997, including by formal written notice from MCAC on December 19, 1996 (enclosed as Attachment 1). BA has raised no objection or complaint before the Commission regarding the negotiations during the five months that they have been underway, but just days before their expected conclusion, BA now raises its first concern.

These negotiations on the Master Contract are inextricably linked to the negotiations on the standard User Agreement. This is because the standard User Agreement is part of the Master Contract and incorporates, by references to the Master Contract, all of its pricing terms (those terms specify that prices for each User will be an allocated amount of the aggregate of all charges to Users based on the allocation model to be issued by the FCC in its pending LNP cost recovery docket³). Accordingly, a party cannot negotiate on only the User Agreement; any participation in the User Agreement negotiations necessarily entails participation in the Master Contract negotiations. BA's Atlantic-Maple 21 request, which is to negotiate jointly with MCAC for the standard User Agreement, is therefore effectively a request to negotiate jointly with MCAC on the Master Contract.

Finally, as all parties to this proceeding agree, time is extremely short. If there is to be any hope of LNP deployment in accordance with the implementation schedule set by the Commission and as modified by the schedule delay until October 31 proposed by BA on May 9,

²See, Consortium Meeting Minutes of April 2 and 3, 1996 (provided in the May 7 filing by five MCAC members).
³In the Matter of Telephone Number Portability, CC Docket No. 95-118.

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the Master Contract and standard User Agreements must be allowed to progress immediately toward execution as expeditiously as possible.

Legal Issues

1. Legal Liability. Bell Atlantic is not a member, and it has stated it does not intend to become a member, of MCAC. However, under Maryland's joint and several liability doctrine,⁴ MCAC could be jointly and severally liable for any claim against BA arising from BA's impact upon the negotiations or upon any other aspect of the Master Contract. The doctrine provides that in the event of BA's inability or unwillingness to pay a judgment against it for an action related to the Master Contract, a party to the Master Contract such as MCAC may be held liable for that judgment. BA acts such as bad faith, fraud, deceit, gross negligence, willful misconduct, wrongful taking, or the provision of false or misleading information could have a significant negative effect on MCAC, not only because MCAC must defend against such claims but because MCAC's insurance does not cover such intentional misconduct (nor would any insurance coverage be available to protect against such risks). Accordingly, such acts could place MCAC's own assets, or potentially MCAC members themselves, at risk for BA's liability. Since MCAC's negotiations are for LNP deployment in the seven jurisdictions comprising the Bell Atlantic service area, negotiations-related liability arising anywhere in the area caused by Bell Atlantic or any of its seven operating companies could accrue to MCAC. Legal responsibility of this nature and to this extent, for the acts of a competitor, is inappropriate and cannot be assumed by MCAC.

The centerpiece of MCAC's risk management strategy addresses this precise concern, but only as to MCAC members. Under Article VIII of MCAC's Operating Agreement, all members are protected by MCAC's insurance and will be indemnified by MCAC for actions made in good faith on behalf of MCAC, but significantly, there is no indemnification or protection of a member determined to have acted in bad faith, with deliberate dishonesty, for improper personal gain, or in contravention of law. Such bad acts will expose the member committing them to sole and several liability, from which MCAC and its members will be immune. Given MCAC's current membership of carriers that are in competition with one another, this risk management strategy is the only viable approach for any joint venture of competing organizations. Without these protections and accountability measures, it was clear during the Consortium's 1995 and 1996 discussions that carriers would not agree to participate in such a joint venture.

If BA were to join MCAC, MCAC's concerns would disappear as BA would be accountable, just as all other MCAC members are, for its intentional wrongdoing and other bad

⁴By the terms of its Operating Agreement at Section 14.3, MCAC is governed by Maryland Law.

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acts. In addition, BA would be protected from the intentional wrongdoing and other bad acts of any other MCAC member.

2. Competitive Neutrality. BA's request is for all the negotiation rights and associated privileges of MCAC membership, without the responsibilities that necessarily accompany MCAC membership. These responsibilities include fiduciary duties arising under common law owed between and among MCAC members. These responsibilities also include financial obligations; MCAC members have to date expended more than \$100,000, as well as resources and in-kind contributions well exceeding that dollar figure, to support MCAC's LNP implementation efforts. BA's request is to have a role in the Master Contract negotiations unlike any other carrier, and as such, to be treated differently than any other carrier implementing LNP, in contravention of the competitive neutrality directive of Section 251(e)(2) of the Telecommunications Act of 1996. The blatant inequity arising from BA's request would not be at issue if BA joined as a member of MCAC.

3. New Legal Issues Arising from BA's Request. Should BA's request be granted, an array of new unresolved issues would emerge. First and foremost, if BA were granted the right to join MCAC's Master Contract negotiations as a non-member of MCAC, a precedent would be set that would cause a parade of other wireless, cable television, wireline, interexchange, small independent and other carriers with even the slightest interest in porting numbers to seek the same opportunity. It is unclear to MCAC how BA could be permitted to join the negotiations while other carriers could be denied. Thus, BA's entrance into the negotiations could precipitate a massive influx of other carriers, and the impact on the near-completed negotiations would likely be devastating. Five months of negotiations progress, the costs of which have been borne entirely by MCAC members, could be lost, thereby effectively eliminating any prospect for compliance anywhere near the deadlines established under the Commission's implementation schedule.

Second, if BA were granted the right to join MCAC's Master Contract negotiations as a non-member, there is no mechanism to address the potential circumstance of disagreement between BA and MCAC on a Master Contract issue or provision. For example, there is no solution in place in the event that BA sought a Master Contract provision beneficial to the incumbent local exchange carrier but detrimental to all non-incumbents. On May 21, Commissioner Ligon raised this concern generally with BA, and BA's response that "we would move on" in the event of a disagreement is non-responsive and does not provide any solution. Moreover, the vendor, charged by the FCC with strictly maintaining competitive neutrality in its implementation of LNP database services,⁵ would have no way of maintaining its neutrality if

⁵In the Matter of Telephone Number Portability, First Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 95-116, FCC 95-286 (released July 2, 1996), paras. 22, 23.

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required to choose between negotiation participants in the event of a disagreement. If BA's entrance into the negotiations precipitates the likely entrance of other interested carriers into the negotiations as discussed above, the problem of disagreement among participants, and its potential disruption of the negotiations, is significantly exacerbated. Disruption and delay in the negotiations further jeopardizes timely deployment of LNP in accordance with the Commission's established implementation schedule.

Third, if BA were granted the right to join MCAC's Master Contract negotiations as a non-member of MCAC, would such a right afford BA the legal right to participate in the ongoing administration of the Master Contract? Many significant actions are expected to arise during administration, including decisions on renewal of the vendor, enhancements to the LNP database, and resolution of disputes with the vendor. MCAC again notes its aforementioned concerns of legal liability, competitive neutrality, influx of other interested non-party administrators, and disagreement among administrators if BA was to enjoy a right to participate in the administration of the Master Contract, incident to its participation in the negotiations.⁴

Fourth, BA's 11th-hour request calls into question the intentions of BA to comply with the Commission's established implementation schedule. BA's request emerges 11 months after the Commission's June 1996 Order establishing this schedule, 13 months after the formation of the Master Contract and standard User Agreement regime, and five months after BA was formally notified of the commencement of Master Contract negotiations. BA's request also emerges just 40 days in advance of the third quarter of 1997 and just several days ahead of the anticipated conclusion of the Master Contract negotiations. Moreover, MCAC notes that on the same March 21, 1997 date BA announced to the Consortium its intent to negotiate its own agreement with the vendor, it also proposed to the Consortium a delay until October 31 in BA's implementation of LNP, a proposal that would fail to meet the Commission's implementation schedule set in June of 1996 and that was subsequently submitted to the Commission on May 9, 1997. In light of these overall circumstances surrounding LNP implementation in Maryland and throughout the mid-Atlantic region, BA's request should be construed as an untimely and undue threat to the Commission's established implementation schedule, and thus should be rejected.

Finally, MCAC notes that the four preceding legal issues arising from BA's entrance into the negotiations would be fully addressed and resolved if BA was to become a member of MCAC. No precedent for other interested carriers to intervene into the negotiations would be set, disputes between MCAC members would be resolved either by MCAC members or MCAC's established dispute resolution process and thus would not unduly disrupt the negotiations, BA would be fully authorized to participate in Master Contract administration, and the prospects for timely compliance with the Commission's established implementation schedule would be greatly enhanced. MCAC hereby renews its repeated invitations to BA to join MCAC, and notes that another ILEC with a significant presence in the mid-Atlantic region, OTE, has just joined MCAC. Significantly, MCAC made at least 15 revisions to its Operating Agreement requested

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by GTE, in an effort to accommodate GTE's concerns with the conditions and requirements of MCAC membership.

4. BA's Request If Granted Would Obviate the Need for MCAC in Contravention of the Direction of Case No. 8704 and the Report of the North American Numbering Council (NANC). As described above, BA's request, if granted, would eliminate the liability protections competing carriers have established between one another and the single negotiating front that competing carriers must present to the vendor in order to bring about a timely and rational execution of the Master Contract. BA's request, if granted, would also jeopardize the equal voice each carrier would exercise in the negotiations by injecting a new party, not subject to MCAC's one-vote-per-member policy, into the negotiations. To eliminate these features is to effectively eliminate the need for MCAC at all. Such action would contradict the Commission's own acquiescence to MCAC and its governance and organization as the vehicle to implement the Commission's established LNP goals.⁶ Such action would also directly conflict with the strong endorsement of MCAC and the other six limited liability companies implementing LNP throughout the nation made by the NANC to the FCC on April 25, 1997. MCAC notes that NANC is the Federal Advisory Committee to the FCC comprised of a cross section of telecommunication industry segments charged with exhaustively examining LNP deployment activities throughout North America, including the activities and characteristics of MCAC and its six counterparts. NANC expressly recognized the concerns for liability protection, single-front negotiations with the vendor, and equal voices among Master Contract negotiators in Section 4.6 and 4.4.2 of its Report recommending and endorsing MCAC and its counterparts.⁷

II.**Proposed Solution**

In light of the positions of MCAC and BA recently expressed, and in light of the views presented herein, MCAC makes the following offer in an attempt to resolve the issues in dispute. Since BA and all other Users are to enter into a standard User Agreement, MCAC is willing to provide a copy of the current draft of the standard User Agreement to BA and any other potential User requesting a copy, subject to two conditions. First, BA and any other potential User requesting a copy must execute an appropriate non-disclosure agreement ensuring non-disclosure

⁶See, Order No. 72708, p. 6

⁷See, Sections 4.6.1, 4.6.2, 4.6.3 and 4.4.2 of the North American Numbering Council (NPA Selection Working Group) to the Federal Communications Commission (April 25, 1997), a copy of which is enclosed as Attachment 2.

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of the copy to any third party. Second, MCAC's provision of the current draft of the standard User Agreement to BA or any other potential user requesting a copy is subject to the approval of the vendor, Lockheed, with whom MCAC is now negotiating.

Thank you for your consideration of these issues. Please direct any questions concerning these issues to me or Anne La Lena, MCAC Chairman.

Sincerely,



Carville B. Collins
MCAC Counsel

Enclosures

cc: Anne F. La Lena, MCAC Chairman
Robert D. Lynd, Assistant General Counsel, Bell Atlantic-Maryland

AT&T Exhibit 3



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Robert D. Lynd
Assistant General Counsel

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May 20, 1997

Mr. Daniel P. Gahagan
Executive Secretary
Public Service Commission of Maryland
6 St. Paul Street
Baltimore, MD 21202

Re: Case 8704

Dear Mr. Gahagan:

By letter to this Commission dated May 7, 1997 ("Letter"), representatives of several companies allege the existence of a "serious problem" that "threatens" implementation of a permanent local number portability solution in Maryland. The Letter's conclusions are in error and its exaggerated sense of alarm is unjustified.

The "serious problem" is the simple fact that BA-MD has proposed to negotiate an agreement with the vendor selected by Maryland Carrier Acquisition Company ("MCAC") to be the administrator of the permanent local number portability ("LNP") data base in Maryland. Such negotiations are necessary because BA-MD was denied the opportunity to participate in contract negotiations between MCAC and the data base vendor. The Letter suggests that BA-MD is prohibited by law from entering into such negotiations. The Letter also suggests that BA-MD is required by law to enter into the contractual terms agreed to by MCAC and the data base vendor during negotiations from which BA-MD was expressly and involuntarily excluded. Finally, the Letter demands that the Commission order BA-MD to enter into the MCAC-negotiated contract, implicitly concluding that this Commission has the authority to do so. In all these respects, the Letter incorrectly states the facts and the law.

Contrary to the Letter's assertions, nothing in Section 251(e)(2) of the Telecommunications Act or elsewhere supports such an inequitable result. Section 251(e)(2) states, in its entirety:

"The cost of establishing telecommunications numbering administration arrangements and number portability shall be borne by all telecommunications carriers on a competitively neutral basis as determined by the [Federal Communications] Commission."

The Letter presents no evidence as to how BA-MD's proposal to negotiate a contract with the data base vendor will result in costs being borne on an other than competitively neutral basis. Section 251(e)(2) clearly does not require that all participants in the number portability plan subscribe to the same identical contractual arrangement. Even the Letter itself recognizes that contracts will not necessarily be uniform, stating at p. 4 that "each User Agreement may vary to accommodate engineering or technical modifications suiting particular network configurations." Because of differences in size, functions, nature and volumes of businesses performed by the various companies involved in the LNP process, the agreements between each such company and the data base vendor will necessarily be different. The Letter also clearly states that under the existing MCAC contract the vendor is currently "precluded from negotiating different terms, conditions and prices with an individual party...in order to preserve competitive neutrality." Thus, the issues the Letter demands this Commission address are apparently already covered by the express terms of the existing MCAC-vendor agreement. In short, the Letter clearly distorts the concept of "competitively neutral basis" far beyond any reasonable statutory interpretation.

It is essential that BA-MD begin negotiations with the data base vendor regarding BA-MD's participation in this aspect of the LNP project. BA-MD requested that it be allowed to participate in negotiations between MCAC and the vendor, but MCAC expressly denied BA-MD permission to participate. At that point, BA-MD had no choice but to advise MCAC orally and in writing that MCAC was not authorized to act on BA-MD's behalf in the negotiation of contracts, agreements or other arrangements. (See, e.g., Attachment A).

BA-MD continues to stand willing to participate in negotiations with the vendor, either separately or in cooperation

with MCAC representatives. The Letter also suggests that BA-MD should have no objection to the MCAC contract with the vendor because BA-MD participated in the drafting and evaluation of the request for proposals ("RFP"). BA-MD has never claimed it was excluded from the RFP process. However, an essential step in any contracting process is the post-RFP negotiation of the contract terms and conditions, because only then are the nature and extent of the commitments of the various parties clearly spelled out. As admitted in the Letter, however, "BA-MD was not included in the negotiations". (Letter, p. 2). As of this date, BA-MD remains completely in the dark as to the terms and conditions of the MCAC contract which the Letter seeks to have this Commission impose upon BA-MD.

The Letter also attempts to invoke the authority of the North American Numbering Council ("NANC") by stating that "nothing" in NANC recommendations endorses BA-MD's plans to negotiate a data base vendor agreement. A better reading of the matter is that there is nothing in any NANC recommendations that would preclude the course outlined by BA-MD. The letter also raises again the fact that BA-MD is not a member of MCAC. As has been discussed in previous correspondence, BA-MD's position in this regard is soundly based upon serious deficiencies in the voting and decision making procedures contained in the MCAC agreement. (See, e.g., Attachments B, C and D.) In addition, recent NANC statements expressly recognize that such membership is not required and carriers that "for whatever reason choose not to become an LLC [e.g., MCAC] member are not in any way disadvantaged in their use of the LNPA's [data base administrator's] services. Thus, such carriers will also be permitted to operate in a competitively neutral environment." (NANC LNPA Selection Working Group Report, April 25, 1997, par. 4.4.9). Thus NANC, the organization tasked with addressing number portability issues delegated by the FCC, has concluded that "LLC membership has been specifically designed not to be a prerequisite to utilization of the LNPA's services". (Id.) The Letter takes the position that BA-MD is required to join MCAC in order to participate in the contracting process and BA-MD has no right to otherwise contract with the data base vendor. As reflected in the most recent NANC pronouncements, this position is without foundation.

The Letter also apparently presumes that the workings of MCAC and its contractual negotiation process constitute "competitively neutral" activities. It is clear, however, that MCAC is made up exclusively of carriers with interests that are

competitive with and at variance from those of BA-MD. When its activities are considered in light of its membership and the voting and related procedural deficiencies referenced above, the MCAC and its dealings cannot be considered "competitively neutral" in any sense of the words.

It should be noted that neither the Act nor the FCC Order even mentions the concept of a limited liability company, or provide for any company such as the MCAC to have any role whatsoever in the implementation of number portability. Instead, the MCAC, which was formed by CLECs to assert their own interests, has gratuitously arrogated that power unto itself. It should not, however, be permitted to insert itself into the process and exercise authority which it does not have by either statute or regulatory order, and which it should not have. In short, the MCAC simply has no authority to dictate any of the terms governing the implementation of number portability, and this Commission should disabuse it of any impression it might have to the contrary.

The Letter demands that this Commission order BA-MD to enter into a contract which it has not negotiated and of which it has no knowledge regarding the terms and conditions. The Letter would have the Commission take this step without regard to the existence of any legal authority for doing so, thereby placing the Commission in an untenable legal position. This proposal should be rejected for that reason alone.

The Letter states that BA-MD's negotiations with the data base vendor will somehow "jeopardize" the implementation of permanent number portability in Maryland. The Letter fails, however, to demonstrate any factual or legal basis for such a conclusion. The only "jeopardy" results from the fact that BA-MD has been denied the opportunity to participate in negotiations with the data base vendor. As stated above, BA-MD stands ready to negotiate at any time, either on its own or with the participation of MCAC.

Very truly yours,

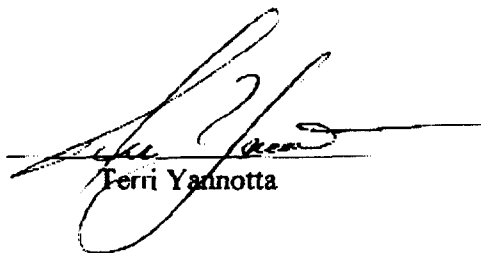


RDL/ead

Attachments

CERTIFICATE OF SERVICE

I, Terri Yannotta, do hereby certify that on this 17th day of June, 1997, a copy of the foregoing "Reply of AT&T Corp." was mailed by U.S. first class mail, postage prepaid, to the parties listed on the attached service list.



Terri Yannotta

June 17, 1997

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